UNIVERSAL RESOURCES CORP.

IBLA 94-770 Decided November 18, 1997

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, affirming the assessment of civil penalties for failure to comply with written orders. SDR 94-031.

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance--Oil and Gas Leases: Production

The regulation at 43 C.F.R. § 3163.1(e) authorizes the State Director to compromise or reduce an assessment. A State Director's refusal to exercise this discretionary authority involves a judgmental decision by agency personnel who have special authority or qualifications to make such decisions, and the Board normally accords considerable deference to the decision when it is supported by substantial evidence. A party challenging the failure of the State Director to invoke this authority must show that the State Director's decision was arbitrary or against the weight of the evidence.

APPEARANCES: Eric L. Dady, Esq., Salt Lake City, Utah, for Universal Resources; Arthur Arguedas, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Universal Resources Corporation (Universal) has appealed a July 7, 1994, Decision of the Acting Deputy State Director, Resource Planning, Use, and Protection, New Mexico State Office, Bureau of Land Management (BLM or Bureau), affirming a civil assessment of $150,000 for failure to comply with a written request to furnish documents relating to production from Communitization Agreement (CA) NMA-21 and leases identified as NMNM-0206995, NMNM-0207001, NMSF-079070, and NMSF-078977. 1/

1/ For convenience, the July 7, 1994, Decision document is referred to as the State Office Decision.

In letters dated June 24, 1993, the Farmington, New Mexico, District Office, BLM, directed Amax Oil and Gas Incorporated (Amax) to submit documents deemed necessary to complete a Detailed Production Accountability Inspection for the period March 1990 through February 1993 with respect to production from CA NMA-21 and oil and gas leases identified as NMNM-0206995, NMNM-0207001, NMSF-079070, and NMSF-078977.

In a conversation record dated August 3, 1993, a notation was made that the deadline for filing the documents had been extended until August 15, 1993. On August 14, 1993, Amax submitted some of the information requested, but failed to submit all of the documents. In January 24 and 31, 1994, letters to Amax, BLM advised Amax that Amax had 20 days to submit the rest of the documents and that if Amax failed to do so, a $250 assessment would be levied for each of the properties. On February 9, 1994, Amax tendered limited additional information. However, not all of the required documents were submitted.

By letters dated February 23, 1994, BLM levied assessments against Amax pursuant to 43 C.F.R. § 3163.1(a)(2) in the amount of $250 for each of the five properties. 2/ An additional 20 days were given to abate the assessments by delivering the remaining documents, which were listed in the February 23 letters. Amax was advised that if it did not submit the documents, civil penalties of up to $500 per day of violation could be assessed. On March 8, 1994, Amax produced additional information, but again failed to submit all of the documents listed in BLM's February 23, 1994, letter.

On March 31, 1994, Amax's parent corporation sold all of Amax's northern region properties to Union Pacific Resources Company (Union Pacific). In turn, Union Pacific conveyed a large number of undeveloped tracts and approximately 1,000 of the wells previously owned by Amax to Universal. Communitization Agreement NMA-21 and leases NMNM-0206995, NMNM-0207001, NMSF-079070, and NMSF-078977 were among the properties conveyed. According to Universal, these transactions were completed in a very short period, hampering Universal's ability to conduct due diligence on every property purchased from Union Pacific.

In letters dated April 8, 1994, BLM advised Amax that because the requested documents had not been submitted within the 20-day abatement period, a civil penalty was being proposed. The proposed amount was $50 per day, continuing until the documents had been submitted or until April 17, 1994, whichever came first. See 43 C.F.R. § 3163.2(a). The Bureau further advised Amax that if the violation remained uncorrected on April 18, 1994, a proposed penalty of $500 per day would be assessed for

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2/ On Apr. 5, 1994, Amax paid the $1,250 assessed by the District Office. See State Office letter.

the period beginning March 8, 1994, and continuing until the violation was corrected, or until May 7, 1994, whichever came first. See 43 C.F.R. §§ 3163.2(b) and 3163.2(g)(2)(iii).

According to Universal, some time in mid-April, Universal employees were in Amax's office collecting information about the properties when they were first apprised of BLM's letters regarding Amax's failure to produce documents. Universal states that it has diligently and actively searched Amax files and contacted the company responsible for measuring production in an attempt to find the information BLM was seeking.

On May 13, 1994, BLM rendered a decision (District Office Decision) informing Amax that it was assessing the $500-per-day civil penalty pursuant to 43 C.F.R. § 3163.2(b), because Amax had failed to comply with a written order issued by an authorized officer. The District Office Decision was received by Universal on May 18, 1994.

On June 9, 1994, Universal submitted additional information to the Farmington District Office. However, not all of the requested documents were included. The documents yet to be submitted were listed in a June 13, 1994, record of a conversation between BLM and Universal. That memorandum also noted that all of the documents for lease NMNM-0206995 had been received.

On June 13, 1994, Universal filed a request for State Director review of the District Office Decision. In its request, Universal stated that since mid-April 1994, when it discovered Amax's failure to comply with BLM's assessment letters, it had actively and diligently attempted to submit the information BLM was seeking, but had been hampered by the fact the documents were not in its office and by other logistic problems attendant with the purchase. Universal asked the State Director to rescind the assessment and toll the daily accumulation of penalties for 60 days, because Universal was unable to locate all of the documents. 3/

On June 14, 1994, formal notice was given to the Farmington District Office that the Amax properties had been conveyed to Universal. In August 1994, the assignment of the leases and operating agreements to Universal was approved, effective July 1, 1994.

On July 7, 1994, the Acting Deputy State Director, Resource Planning, Use, and Protection, New Mexico State Office, issued the State Office Decision affirming the District Office Decision. The Deputy found that the Farmington District Office had correctly followed the procedure set out in
43 C.F.R. § 3163 and that the actions taken by that office were reasonable.
Noting that no notice of the merger and sale were given to the Farmington District Office for more than 60 days following those transactions, he also

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3/ Universal did not seek 60 days to furnish the documents for lease NMNM-0206995 because it had furnished all of the information BLM had been seeking for that lease.

held that Amax remained the operator of record. The District Office Decision was affirmed, and Union Pacific was deemed responsible for the full penalty assessment of $500 per day for each entity for a period of 60 days ($150,000). The State Office Decision noted that the submittals were incomplete for CA NMA-21 and the leases identified as NMNM-0207001, NMFS-079070, and NMFS-078977. Universal was directed to forward the remaining documents to the Farmington District Office within 60 days from the date of receipt of the State Office Decision. 4/ Universal has appealed the State Office Decision to this Board.

On appeal, Universal argues that the imposition of the penalty is unreasonable because it penalizes the wrong party, it is not necessary for compliance, and it is not necessary as a deterrent. It additionally agues that it had strived diligently to provide the information in good faith. Universal urges the Board to rescind, or at the very least reduce, the $150,000 penalty.

[1] A brief restatement of the chronology of this case is warranted. In June 1993, BLM directed Amax to submit documents. The deadline for submittal was extended, and Amax submitted a small portion of the information requested on August 14, 1993, one day before the deadline. In January 1994, BLM gave Amax 20 days to submit the rest of the documents. In early February, additional information (but not all of it) was submitted. On February 23, 1994, BLM levied assessments for failure to produce the documents and gave Amax 20 days to deliver the remaining documents. Amax was advised that if it did not submit the documents, civil penalties of up to $500 per day per well could be assessed. On March 8, Amax produced additional information, but failed to submit all of the documents. On May 13, 1994, BLM assessed the $500-per-day civil penalty for failure to comply with a written order. The District Office Decision was received by Universal on May 18, 1994. On June 9, 1994, Universal submitted some of the remaining information. On June 13, 1994, Universal asked the State Director to rescind the assessment and toll the daily accumulation of penalties for 60 days because Universal was unable to locate all of the documents. On June 14, 1994, Universal gave notice that Amax properties had been conveyed to Universal. On July 7, 1994, BLM's State Director's Office affirmed the assessment of penalties, noting that the submittals were still incomplete. Universal did not achieve compliance with the February 23, 1994, written order of the authorized officer until July 21, 1994.

When Amax failed to meet the extended deadline, BLM issued a written order directing it to deliver the documents within 20 days. Amax
did not deliver the required documents, and BLM issued a further written order directing the delivery of the documents within 20 days and assessing

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4/ The State Office Decision acknowledged that all necessary information had been received for lease NMNM-0206995. Exhibit "7" to Universal's memorandum in response to a BLM Motion to Dismiss is a BLM Letter, dated Aug. 10, 1994, acknowledging receipt of all of the documents on July 21, 1994.

$250 per violation. Following expiration of the second 20 day compliance period, BLM properly issued its notice of proposed civil penalties. See Shogun Oil, Ltd., 136 IBLA 209, 213 (1996); William Perlman, 96 IBLA 327, 331-32 (1987). This levy of penalties comports with the regulations and was properly affirmed by the Acting Deputy State Director.

Universal argues that the penalty should be waived or reduced because of its good faith effort to comply. We note that the regulation at 43 C.F.R. § 3163.1(e) authorizes the State Director to compromise or reduce an assessment. Moreover, an assessment for a minor violation under 43 C.F.R. § 3162.1(a)(2) itself is discretionary. However, the circumstances were reviewed by both the Area Manager and the Acting Deputy State Director and neither considered Amax's efforts sufficient for waiver or reduction of the assessments. 5/ Cases such as this involve a judgmental decision by agency personnel who have special authority or qualifications to make such decisions, and the Board normally accords considerable deference to the decision when it is supported by substantial evidence. Fancher Oil Co., 121 IBLA 397, 402 (1991).

A party challenging the failure of the State Director to invoke this authority must show that the State Director's decision was arbitrary or against the weight of the evidence. See Conley P. Smith Oil Producers, 131 IBLA 313, 322 (1994); Northland Royalty Operating Co., 129 IBLA 164, 166 (1994); Northland Royalty Operating Co., 123 IBLA 104, 107 (1992). The record now before us supports the State Office Decision, and we have found no basis for concluding that the Acting Deputy State Director abused his discretion. Amax was given extensions of time for delivery of the documents, offered little in the way of an explanation as to why it was unable to comply, and submitted nothing that would indicate a good faith effort to garner the necessary documents in a timely manner.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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R.W. Mullen
Administrative Judge

I concur:

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John H. Kelly
Administrative Judge

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5/ Universal states that sale and conveyance transactions were completed in a very short period, hampering Universal's ability to conduct due diligence on every property. If it had, it could have negotiated with AMAX regarding the liability for the penalties. We do not question this business decision.